of this right will be restrained by injunction (Coppinger v. Shehan[22], and Lyon v. Fishmongers' Co.[14], ubi supra)."

Basing my opinion on all these authorities I have no difficulty in holding that the defendants, both as riparian owners and as members of the general public, are entitled to navigate their craft over so much of both the "waterways" marked and shown on Plan C. as lie within the boundaries of Lot 171. I cannot, in this action, make any declaration about the more southern parts of these "waterways" which are outside the southern boundary of Lot 171, but I think I can and should here affirm what I have already said in connection with another issue, and that is, that the defendants are entitled to free access from the "Branch of Kallang River" marked and shown on Plan C to their wharf which is situate at the southern end of the right hand waterway.

And now I feel that I have dealt with every important point raised in this case, but I do recall that Mr. Mallal was, for some time, asking questions designed to show that the "waterway" leading to the defendants' wharf was an artificial one which had been dredged or dug out by their workmen.

In my opinion this waterway is, in all probability, a natural waterway; but I do accept the first plaintiff's statement that he has, on occasion, seen the defendants' employees removing mud debris from the same at low water.

The true explanation of what the first plaintiff saw is, I think, to be found in the evidence of the defendants' witness Low Phui Hung where he says — "at times we have removed tree barks from the channel, that is, tree barks which have fallen from the logs into the channel." It is common ground that all the bark is chipped off the thousands of logs used by the defendants whilst they are stored on the "Kwong Hock Cheong Encroachment" areas, and before they are drawn into the mill. I myself have seen that preliminary bark chipping in progress and the process does undoubtedly lead to a considerable accumulation of debris which would, probably, choke the "waterway" leading to the defendants' wharf were it not removed from time to time.

Judgment for the defendants.

Solicitors for the plaintiffs: *Mallal & Namazie.*

Solicitors for the defendants: *Braddell Bros.*

WONG POOH YIN v. PUBLIC PROSECUTOR.

[C. A. (Mathew, C.J., Wilson and Buhagiar, JJ.) November 12, 1953]

[K.L. — F.M. Criminal Appeal No. 57 of 1953]

Emergency Regulations, 1951, reg. 4(1)(a) — Carrying arms without authority and without lawful excuse — Strict liability — Meaning of "lawful excuse".

The main question in this appeal was whether a terrorist caught in possession of a firearm can be said to have a lawful excuse for carrying the firearm if it can be shown that he was on his way to surrender and that he was carrying it for the purpose of taking it to the police.

Held: in cases of absolute prohibition a man cannot change the nature of his act from an unlawful one to a lawful one, by a mere change in his intention. Even accepting the bona fides of the appellant's intention to surrender, this could not constitute a lawful excuse within the meaning of the regulation.

Cases referred to:—

(1) *Dickins v. Gill* (1896) 2 Q.B. 310.

(2) *Winkle v. Wiltshire* (1951) 1 T.L.R. 368.

CRIMINAL APPEAL.

K. K. Benjamin for the appellant.

P. G. Clough for the respondent.

Cur. Adv. Vult.

Mathew, C.J. : — The appellant was convicted of carrying a revolver without lawful authority contrary to regulation 4(1)(a) of the Emergency Regulations, 1951, and was sentenced to death. Mr. Benjamin who appeared for the appellant has made two submissions:—

(i) the learned trial Judge did not adequately or at all direct the assessors on the question of "lawful authority" and "lawful excuse";

(ii) the learned trial Judge was wrong in not directing the assessors that if they thought that the appellant was attempting to surrender he had a lawful excuse for carrying the revolver.

Regulation 4(1)(a) reads:—

"Any person who **without lawful excuse, the onus of proving which shall be on such person,** carries or has in his possession or under his control —

(a) any fire-arm, without lawful authority therefor .....shall be guilty of an offence and shall on conviction be punished with death."

(The words underlined were added by L.N. 363 of 1.7.52.)

The regulation aims at the absolute prohibition of the carrying, possessing or controlling of fire-arms, ammunition and explosives except under licence or by members of the security forces or by persons exempted from the provisions of the regulation. A person carrying, possessing or controlling a fire-arm without authority can only avoid conviction if he can prove that he has a lawful excuse for contravening the regulations. The regulation contemplates an absence of lawful authority being cured by lawful excuse.

It is no concern of ours to define the meaning of "lawful excuse", and it would clearly be undesirable to attempt to do so, as each case requires to be examined on its individual facts. Mr. Benjamin has submitted that if a terrorist is coming in to the authorities to surrender and brings with him a fire-arm or other thing covered by the regulation, he has proved a "lawful excuse" which would entitle him to acquittal. We think it right at once to say that the policy which is adopted by the Government to induce terrorists to surrender is no concern of ours, and for the Courts to attempt to apply a policy that has not been made the subject of a written law, can only lead to confusion. Whether an individual is prosecuted or not is a matter entirely for the authorities responsible for launching prosecutions, and it cannot be submitted successfully as a defence that Government in general terms has indicated that certain offences would be overlooked if offenders took a certain course.

Mr. Benjamin quoted from the summing-up of a learned Judge in another trial (Perak Cr: Trial No. 114/1952), and submitted that a similar direction should have been given in this case. It is convenient to set out the relevant passage in the earlier summing-up quoted:-

"The only question in the case is whether he had lawful excuse. If he had, that is a good defence but as the law stands it is for him to prove it. That does not mean that he must prove it up to the hilt but it does mean that he must make you think that it is reasonable and probable that he had a lawful excuse. As I understood him, he would have you believe that on that particular morning when he was found in possession by the Gurkhas he was coming out of the jungle to surrender. Now, if you think that immediately before he was caught he was on his way out to surrender, and he was carrying that hand grenade simple and solely for the purpose of taking it to the police, that, of course, is a lawful excuse. If you think that that may reasonably and probably be true it would be your duty to say that he is not guilty."

The questions for our decision are whether that direction is a correct direction in law and whether a direction to that effect should have been given in this case where a "lawful excuse" of the same kind was alleged by the appellant at his trial.

There are two cases which are of some assistance to us. In *Dickins v. Gill*[1], the head-note reads:—

"By section 7(c) of the Post Office (Protection) Act, 1884, 'a person shall not make, or, unless he shews a lawful excuse, have in his possession, any die, plate, instrument, or materials for making any fictitious stamp.'

The proprietor of a newspaper circulating among stamp-collectors and others caused a die to be made for him abroad, from which imitations or representations of a current colonial postage-stamp could be produced. The only purpose for which the die was ordered by him, and was subsequently kept in his possession, was for making upon the pages of an illustrated stamp catalogue or newspaper, called 'The Philatelist's Supplement,' illustrations in black and white and not in colours of the colonial stamp in question, this special supplement being intended for sale as part of his newspaper:—

Held, that the possession of a die for making a false stamp known to be such to its possessor, was, however innocent the use that he intended to make of it, a possession without lawful excuse within the meaning of the above section."

We would refer to two passages from the judgment of Grantham, J.:—

(P. 314): "The case is no doubt one of considerable importance and deserving of careful argument; but I have been unable to alter the conclusion which I arrived at early in the proceedings, that the learned magistrate mistook the meaning of the words 'lawful excuse' in arriving at his determination. Practically what he has done amounts to saying that in his judgment the fact that the respondent believed that he was not doing wrong amounted to a lawful excuse within the meaning of the section. I cannot think that that can be so, or that belief that a person is not doing wrong when in fact he is doing wrong can afford him a lawful excuse."

(P. 315): "Is it a lawful excuse that he wanted to shew people what the original stamp was? I think not, for it was wrong for him to have the die in his possession at all."

In *Winkle v. Wiltshire*[2], the head-note reads:—

"By the Stamp Duties Management Act, 1891, and section 65(1)(b) of the Post Office Act, 1908, as applied to the case of national insurance stamps by the National Insurance and Industrial Injuries (Stamps) Regulations 1948: 'a person shall not.....have in his possession, unless he shows a lawful excuse any fictitious stamp.'

A person who innocently buys fictitious insurance stamps which had been unlawfully sold to him by one not authorised or licensed to deal in such stamps, does not show a lawful excuse for having the stamps in his possession. To take advantage of the defence afforded by the regulation he must also show that he obtained the stamps by means of a lawful transaction."

We would refer to the following passage from the judgment of the Lord Chief Justice:—

(P. 370): "The only way in which that decision could possibly be upheld is by saying that the words 'without lawful excuse' are the same as 'with knowledge,' because to justify the magistrate's finding the section and regulation would have to read:

'A person shall not knowingly have in his possession any fictitious stamp, or shall not have in his possession any stamp which he knows to be fictitious.'

That is not what the section states: the words are 'without lawful excuse,' and it cannot be a lawful excuse to say: 'I did not know that the stamps were forged,' because that could only be a defence if the person charged had bought the stamps in a regular way at a post office or from a licensed dealer, who are the only persons who can sell stamps without incurring a penalty. Of course, if a person bought at a post office stamps which turned out to be fictitious, he would have a perfectly lawful excuse unless, indeed, he recognised and knew that the stamps were fictitious; in which case, he could not have a lawful excuse."

In the present case the carrying of a fire-arm is absolutely probibited by the regulation unless a lawful excuse is found. The excuse claimed by the appellant to be lawful is in short: "I was on my way to surrender". That may be a ground for commutation of sentence, but it cannot cure his admitted carrying of a fire-arm without lawful authority. He is saying in effect: "I admit having a revolver without lawful authority, but as I am bringing it in to give to the police I have a lawful excuse," or, put in another way:

"My decision to surrender made the carrying of the revolver lawful." "My intention to cease committing an offence provides a lawful excuse for continuing temporarily to commit the offence". This is tantamount to saying that a man can change the nature of his act, from an unlawful to a lawful one, by a mere change in his intention. That may be true of offences of which intention is an ingredient, but it is not true of offences to which the doctrine of "absolute prohibition" applies.

In our view, even accepting the *bona fides* of the appellant's intention to surrender, this could not constitute a lawful excuse. If an administrator who is compelled by law to take possession of a deceased's property is found to have an un-licensed fire-arm in a suit-case not yet opened, he clearly has a lawful excuse. If a person finds a stick of dynamite on the road and takes it to the appropriate authorities, he clearly has a lawful excuse. If a terrorist after some time in the jungle decides to surrender with his arms, he has an excuse, and if he is acting on a "surrender leaflet" addressed to him by the security forces, he may have a political or an administrative excuse but, in our opinion, that does not amount to a lawful excuse within the meaning of the regulation.

In our view, the learned trial Judge adequately directed the assessors on "lawful authority", and rightly rejected the submission of Counsel for the accused at the trial that a "lawful excuse" had been established which entitled the accused to acquittal. The fact that he did not actually use the words "lawful excuse" did not appear to us to be of moment.

We dismiss the appeal.

Appeal dismissed.

Solicitors for the appellant: *Benjamin & Sen.*

MARY NG v. SINGAPORE IMPROVEMENT TRUST.

[A. C. J. (Brown, Ag. C.J.) October 20, 1953]
[Singapore — District Court Appeal No. 12 of 1953]

Landlord and tenant — Claim for possession of land coming within definition of 'premises' in s. 2 of the Control of Rent Ordinance, 1947 — Liberty to abandon excess claim for mesne profits in District Court — Onus of proving consent of landlord to erection of building.

This was a claim for possession of a piece of land whereon a building had been erected, and for mesne profits. Two points were raised at the appeal, firstly: at the date of trial the claim for mesne profits exceeded the jurisdiction of the District Court and therefore the Court was functus officio and the Judge should not have allowed the claim to be amended.

Held: under section 57 of the Courts Ordinance and Order 21, r.2 of the District Court Rules, the respondents (plaintiffs) were entitled to abandon the excess claim and that it was not necessary to abandon the claim in toto.

The second point raised turned on whether the land in question came within the definition of 'premises' in section 2 of the Control of Rent Ordinance. This depended on whether the building erected thereon had been erected with the consent of the landlords at the time of erection.

Held: the onus of proving such consent was upon the appellant. **Chang Gim Heng v. Credit Foncier**[3] distinguished.

Held further: the acceptance of rent after termination of notice to quit does not necessarily create a new tenancy.

[**Editorial Note:** The Control of Rent Ordinance, 1947 was repealed and replaced by the Control of Rent Ordinance, 1953.]

Cases referred to:—

(1) *Upton v. Farmer* 142 L.T. 526.
(2) *Legon v. Count* (1945) 1 All E.R. 710.
(3) *Chang Gim Heng v. Credit Foncier* (1952) M.L.J. 223.
(4) *Toleman v. Portbury* L.R. 5 Q.B. Cases 288.
(5) *Morrison v. Jacobs* (1945) 2 All E.R. 430.

DISTRICT COURT APPEAL.

G. J. Okell for the appellant.

J. D. Donnelly for the respondents.

Cur. Adv. Vult.

Brown, Ag. C.J. : — By an agreement in writing dated 20th December 1946 the appellant (who was the defendant in the Court below) became the tenant of the respondents in respect of a piece of land, having an area of 21,000 square feet, situate off the Tiong Poh Road at a monthly rental of $100. It was a term of the agreement that no structure should be erected without the permission of the respondents. On the 27th December 1946 the appellant applied in writing for permission to enclose the area with a zinc fence, which was to be covered by a zinc covering. It would appear from a letter dated 2nd January 1947, which was produced and admitted in evidence as Exhibit P-3, that permission was granted to enclose the area, but not to erect the covering; but no proof of this letter was forthcoming, and one of the points taken in this appeal is that the learned District Judge attached weight to a document which ought not to have been admitted. At the beginning of 1952 the appellant was given notice to quit. But having appeared before the Evictions Committee she was allowed to remain; and she continued to pay rent until the end of 1952, when she received a second notice to quit, terminating her tenancy on 31st January 1953. Thereafter she tendered the rent for February, March and April 1953, which was accepted; but it is clear from the evidence of the respondents that the rent was accepted in error.

The summons was dated 23rd February 1953. It claimed possession of the land and included a claim for *mesne profits* "from the 1st day of September 1952